

Public funds and private charity already take care of the poor sick. Our present objective should be to forestall the necessity of caring for the middle class sick in the same way. Certainly from the taxpayers' standpoint it is much more desirable to encourage 2,500 government employees in Washington—or any other group of citizens—to finance their own medical care through a cooperative arrangement than to deny them that right and invite them to seek public or private assistance whenever they fall ill.

Mr. Arnold was careful to state in his opinion that he is not accusing the members of the medical societies of a moral offense. Indeed, he invited them as "persons of distinction and good will" to cooperate in ending the impasse "so that there may be free and fair competition between the forms of organization and the older types of practice." It is to be hoped that the American Medical Association's Chicago office will dismount from its high horse and join with the humble laity in a search for the just and intelligent course.—*The Boston Herald*, reprinted in the *Ontario Report*, August 22.

### THE ENGLISH ABORTION TRIAL\*

In April, 1938, a girl of fourteen was assaulted in England by several troopers of the Royal Horse Guards, and as the result of the assault she became pregnant. The organizer of the School Care Committee brought the girl to the attention of Dr. Joan Malleon, a well-known woman physician in London. It was Doctor Malleon's opinion that in view of the circumstances the pregnancy should be terminated, and she sent a letter to Dr. Aleck W. Bourne, one of the most distinguished British gynecologists, with the suggestion that someone of his standing should undertake the operation, preferably in a public hospital. Doctor Bourne, who is obstetric surgeon at St. Mary's Hospital and consulting obstetric surgeon at Queen Charlotte's Hospital, replied that he would be glad to admit the patient to St. Mary's Hospital and perform the operation. The girl was sent to Doctor Bourne and he had her admitted to the hospital, and after a week of observation curetted her on June 14. He then notified the police of his act and invited them to take whatever action they deemed proper under the circumstances. The Attorney-General considered the operation to be unlawful and accordingly brought Doctor Bourne to trial.

The English law on abortion had never been completely clarified before. A statute passed in 1861 forbade "the unlawful use of an instrument for the purpose of procuring a miscarriage." No definition, however, of what was lawful or unlawful was contained in that statute. An additional statute, the Infant Life Preservation Act, passed in 1929, reads as follows:

Any person who with intent to destroy the life of a child capable of being born alive or by any wilful act causes a child to die before it has an existence independent of its mother shall be guilty of a felony, to wit, child destruction.

No person shall be found guilty of an offense under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

Although this Act was seemingly intended to apply only to cases where the child is destroyed at the time of birth, it has been taken to apply also to ordinary cases of abortion, and has been interpreted to mean that an abortion may be performed "for the purpose only of preserving the life of the mother."

The trial took place on July 18 and 19, 1938, at Old Bailey before Mr. Justice Macnaghten and aroused wide interest in legal and medical circles. Doctor Bourne was charged with "unlawfully using an instrument with intent to procure the miscarriage" of the girl, the word "unlawful" having been inserted in the complaint at the suggestion and insistence of Mr. Ronald Oliver, the attorney for the physician. During his testimony Doctor Bourne stated that the question of when the termination of a pregnancy was justified was a constant problem with all who practiced gynecology. In October, 1935, he related, he had operated in a similar case. At that time the house surgeon declined to assist him when he learned the nature of the operation, and

walked out of the operating room. "The refusal of my house surgeon to assist me led me to think very hard on this matter, and I decided on the next occasion to obtain a ruling of the court. That is why we are here." His interpretation of the law, Doctor Bourne said, based on everyday practice of men of repute in the medical profession, was that it was justifiable to perform the operation where there was danger to health. "I cannot draw a line between danger to life and danger to health," he said. "If we wait for danger to life the woman is past assistance." In this particular case he felt that although there was no immediate danger to the life of the patient from the pregnancy, the mental injury would last a very long time and she would suffer from nervous, psychoneurotic and other troubles, with their secondary physical illnesses, perhaps all her life. It was in order to avoid these results that he had decided to operate. He thought that 99 per cent of his colleagues would agree with him under such circumstances.

Three experts were called by the defense: Dr. John Rawlings Rees, a consulting psychiatrist; Dr. William Gilliatt, an examiner in midwifery and diseases of women for Cambridge and London Universities; and Lord Horder, the physician to the King. These men gave testimony in favor of Doctor Bourne, and stated that under the conditions described they would have advised the termination of the pregnancy.

In his summary, Mr. Oliver, the attorney for the defense, pointed out that Doctor Bourne had undertaken this operation for purely humanitarian reasons and without any compensation. "His attitude," said Mr. Oliver, "is: 'What I have done is lawful, is right, is honest and I have not committed an offense.' It was done to get the law declared so that there should no longer be this controversy among the public and in the medical profession as to what a doctor is allowed to do and what he is not allowed to do." He asked the jury to take a wide and liberal view of the meaning of the phrase "preservation of the life of the mother." The mental health of this girl, he said, was likely to be gravely prejudiced for the rest of her life, and upon her mental and physical health her life ultimately depended.

The Attorney-General, Sir Donald Somervell, insisted, in turn, that a distinction should be made between the preservation of health and the preservation of life, and that in this case the abortion was performed not "for the purpose only to preserve life."

In his summary to the jury, Mr. Justice Macnaghten pointed out that this case differed from the ordinary type of abortion case that came before the court. Doctor Bourne, he said, "a man of the highest skill, openly performed the operation in one of the great hospitals. He performed it as an act of charity, believing that he was doing the right thing, and that in the performance of his duty as a medical man devoted to the alleviation of human suffering he ought to do it." The justice urged the jury to take a *reasonable* view of the words 'preservation of the life of the mother.' "I do not think," he said, "that it is contended that these words mean merely for the preservation of the life of the mother from instant death. . . . All life depends on health and it may be that health is so gravely impaired that death results."

"If you think," he continued, "that the Crown have satisfied you beyond all real doubt that Doctor Bourne did not do this act in good faith for the purpose of preserving the life of the girl, then he is guilty of the offense with which he is charged. If the Crown have failed to satisfy you of that, then by the law of England he is entitled to a verdict of acquittal. The case is a grave one and raises matter of grave concern both to the medical profession and to the public."

The jury, which included two women, retired for forty minutes, and returned a unanimous verdict of "Not Guilty." Doctor Bourne was then discharged.

The trial had aroused widespread interest and the court was crowded with "London's most fashionable physicians and social lights." When the verdict was announced it was received with loud applause. It clearly was a popular verdict in England, and the acquittal of Doctor Bourne is considered a most important event in English medico-legal history.—*Journal of Contraception*, September, 1938.

\* A summary of the recent trial of Dr. Aleck W. Bourne.